

Pages 1 - 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

IN RE BROCADE COMMUNICATIONS)
SYSTEMS, INC. DERIVATIVE) Case No. C 05-2233
LITIGATION)
_____) San Francisco, California
March 13, 2009

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff DEWEY & LEBOEUF LLP
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BY: PETER ROOT, ESQUIRE

For Defendant ORRICK, HERRINGTON & SUTCLIFFE
Robert D. Bossi: The Orrick Building
405 Howard Street
San Francisco, California 94105
BY: WALTER F. BROWN, JR., ESQUIRE

RAMSEY EHRLICH
803 Hearst Avenue
Berkeley, California 94710
BY: MILES EHRLICH, ESQUIRE

For Defendant HOGAN & HARTSON LLP
Antonio Canova: 525 University Avenue, 2nd Floor
Palo Alto, CA 94301
BY: NORMAN J. BLEARS, ESQUIRE

Reported By: *Katherine Powell Sullivan, CSR #5812*
Official Reporter - U.S. District Court

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P R O C E E D I N G S

MARCH 13, 2009

10:04 A.M

THE CLERK: Calling case C 05-2233, In re Brocade Communications Systems.

Appearances, counsel.

MR. ROOT: Good morning, Your Honor. Peter Root from Dewey & LeBoeuf, on behalf Plaintiff Brocade Communications Systems, Inc.

MR. BROWN: Good morning, Your Honor. Walt Brown on behalf of Mr. Bossi.

MR. EHRLICH: Good morning, Your Honor. Miles Ehrlich also on behalf of Mr. Bossi.

THE COURT: Good morning.

MR. BLEARS: Good morning, Your Honor. Norman Blears, Hogan & Hartson, on behalf of Mr. Canova.

THE COURT: So this matter is on for a motion to approve the settlement and entry of a bar order. The Court has not received any objections. Though, technically, I'm not quite sure it would. But, nevertheless, it seems satisfactory.

I did want to ask one question, which is, Mr. Canova -- part of the settlement is that Mr. Canova agrees to, quote, use his best efforts to convince the SEC to remit to Brocade about \$250,000.

MR. BLEARS: Yes, Your Honor.

1 **MR. ROOT:** And the --

2 **THE COURT:** Well --

3 **MR. ROOT:** -- staff has approved it, as well.

4 **MR. BLEARS:** The staff was --

5 **THE COURT:** Well, the SEC is giving back 250,000?

6 **MR. ROOT:** Remitting it to Brocade.

7 **THE COURT:** It is?

8 **MR. BLEARS:** As a fair funds distribution back to the
9 corporation; therefore, indirectly to the shareholders.

10 **THE COURT:** Amazing. I mean, I was all set to
11 question whether that was real consideration.

12 **MR. BLEARS:** It has been approved by the staff. It
13 has not been before the Commission yet. But we expect that to
14 happen in the next 30 days.

15 **THE COURT:** Well, that's terrific. I guess they
16 don't need the money.

17 **MR. EHRLICH:** Stimulus package.

18 (Laughter)

19 **MR. BROWN:** Just ask for some more.

20 **THE COURT:** Well, congratulations. I think that
21 that's entirely -- it's amazing. For me, I'm speechless. And
22 that's even more amazing. But, there we are.

23 Okay. I approve the settlement. I find that there's
24 a complete bar for purposes of contribution or offset or setoff
25 or whatever the other terms are. And I'll sign an order to

1 that effect.

2 Did you prepare an order, or is that part of the --

3 **MR. ROOT:** Your Honor, I submitted one for each of
4 Mr. Bossi and Mr. Canova, with the papers.

5 **THE COURT:** Yes, I have it right here. I have it.
6 Six. Okay.

7 Well, I'll E-file it today in its form.

8 And thank you very much for coming. I know that was
9 somewhat of an inconvenience, but I really was so curious about
10 the -- about your abilities to convince the SEC to disgorge. I
11 thought, That's just remarkable. Well, they're not unfamiliar
12 with that term. But probably from that point of view they are,
13 in that respect.

14 Anyway, thank you very much.

15 Now, I think that ends, does it not, much to the
16 relief of all the litigants, my participation in the Brocade
17 litigation, save and except for I think I retain jurisdiction
18 if there are enforcement issues as they relate to -- as they
19 relate to the arbitration. Is that right?

20 **MR. ROOT:** That is correct, Your Honor. You're
21 absolutely right that this now ends, sort of, your
22 participation, actively anyway, because we had the five
23 defendants who were dismissed from the complaint. Two settling
24 defendants, and the remaining three are now in arbitration.

25 And you're right, Your Honor, you have retained

1 jurisdiction pending the completion of that arbitration.

2 **THE COURT:** And I don't have to do any of the
3 discovery, right, of that arbitration?

4 **MR. ROOT:** That is correct, Your Honor.

5 **THE COURT:** I wash my hands of that. And when is the
6 arbitration scheduled?

7 **MR. ROOT:** It is scheduled to begin June 22, at this
8 point.

9 **THE COURT:** June 22.

10 **MR. ROOT:** Yeah.

11 **THE COURT:** Who are the arbitrators?

12 **MR. ROOT:** Chief Justice -- former Chief Justice
13 Veasey of the Delaware Supreme Court. Judge Thompson, a former
14 U.S. District judge in Oklahoma. And Judge Charles Renfrew is
15 the chair.

16 **THE COURT:** A judge in this court and deputy attorney
17 general.

18 **MR. ROOT:** Right.

19 **THE COURT:** Well, thank you so much.

20 (Counsel simultaneously thank the Court.)

21 (Proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, April 27, 2009

s/b Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR
U.S. Court Reporter